

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Telephone Number Portability) CC Docket No. 95-116

REPLY

BellSouth Corporation, on behalf of itself and BellSouth Telecommunications, Inc.,¹ by counsel, files this reply to the comments of MCI Telecommunications Corporation filed in this proceeding on February 23, 1998.

In a footnote, MCI refers to BellSouth's November 6, 1997 Application Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Louisiana, as well as the Commission's Memorandum Opinion and Order denying that Application. MCI then offers two assertions that have no factual basis and are legally incorrect:

BellSouth and other incumbents cannot, on the one hand, argue that PCS actually competes with wireline service, and on the other, that PCS providers should not be required to provide number portability." MCI Comments at n.24.

Neither BellSouth nor any other wireline incumbent local exchange carrier filed comments in this proceeding arguing that PCS providers should not be required to provide

¹ BellSouth Corporation is a publicly-traded Georgia corporation that holds the stock of BellSouth Telecommunications, Inc., a Bell operating company that provides wireline telephone exchange service and exchange access service in parts of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

number portability. In any event, as explained below, number portability is completely unrelated to whether PCS providers satisfy the statutory definition of a "competing provider" set forth in section 271(c)(1)(A), the issue addressed by BellSouth in its section 271 Application (Louisiana).

"If PCS providers do not provide number portability, they should not be considered 'competitors' to wireline service providers." MCI Comments at n.24

MCI is wrong as a matter of law. The Communications Act of 1934, as amended, does not impose the obligation of number portability upon PCS providers. 47 C.F.R. § 251(b)(2). The obligation falls on local exchange carriers, which are defined in the Act in part as "any person that is engaged in the provision of telephone exchange service" but does not include "a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term." 47 U.S.C. § 153(26). PCS providers are providers of commercial mobile service under section 332(c) and are therefore excluded under the definition of "local exchange carrier." Thus, Congress did not impose the obligation to provide number portability upon PCS providers.

Under section 271(c)(1)(A) of the Act, a BOC may demonstrate that there are "competing providers of telephone exchange service" in the state in which it seeks authority to provide interLATA service. As the Commission noted in its recent Section 271 Order (Louisiana), and unlike the definition of "local exchange carrier" in section 153, the exclusion in the final sentence of subparagraph 271(c)(1)(A) excludes only cellular carriers, and not PCS carriers, from being considered "facilities-based competitors." Louisiana Order at ¶ 72. Section 271 (c)(1)(A) provides:

For the purpose of this subparagraph services provided pursuant to subpart K of part 22 of the Commission's regulations (47 C.F.R. 22.901 et seq.) shall not be considered to be telephone exchange service.

As the Commission noted:

The rules governing PCS services are contained in part 24 of the Commission's rules. This statutory exclusion is specific and precise. We find that Congress did not intend such a specific reference to a single subpart of our rules to apply to a service that is subject to a different subpart of a different part of our rules.

Louisiana Order at ¶ 72. Thus, Congress expressly intended the presence of PCS providers, which are not obligated to provide number portability under the Act, to be a "competing provider of telephone exchange service" under section 271(c)(1)(A) of the Act.

The Commission has imposed the same requirement of number portability applicable to LECs under section 251 of the Act upon CMRS providers, including PCS providers. It did so without deciding whether CMRS providers must provide number portability as LECs under section 251, but rather under independent authority under sections 1, 2, 4(i) and 332 of the Act.² Whether or not the Commission requires CMRS providers, including PCS providers, to provide number portability, and whatever the statutory basis of jurisdiction for imposing that requirement, Congress specifically allowed PCS providers to be considered as "competing providers" of telephone exchange service under section 271. Thus, the Commission is free to impose or forbear from requiring PCS providers to provide number portability without in anyway altering the status of PCS providers as potential section 271 competing providers of telephone exchange service. If the Commission determines that it should forbear from imposing a number

² *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996) (*First Report and Order*), recon. pending at ¶¶ 152-53.

portability requirement on PCS providers, such forbearance would not, as MCI argues, disqualify PCS providers from consideration as a section 271(c)(1)(A) competing provider. To do so would constitute an impermissible agency revision of a statutory requirement.

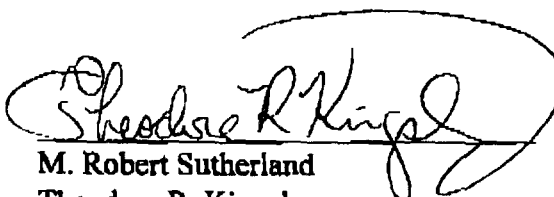
CONCLUSION

Whether or not PCS providers provide number portability is immaterial to their status as a competing provider of telecommunications service under section 271(c)(1)(A) of the Act.

Respectfully submitted,

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Date: March 10, 1998

CERTIFICATE OF SERVICE

I do hereby certify that I have this 10th day of March, served all parties to this action with a copy of the foregoing **Reply** by placing a true and correct copy of same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.

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